

REMARKS

Claims 1-17, 19-28 and 30-35. Claim 29 has been cancelled.

While the Office Action indicates that claims 1-17, 19-28 and 30-35 are allowable, the USPTO Examiner called applicants' representative on July 9, 2009 to verbally state a provisional nonstatutory obviousness-type double patenting rejection of: (a) claims 1, 5, 21, 24 and 27 over claims 35 and 38 of Ishii et al. U.S. Patent Application Publication 10/594,282; and (b) claims 22, 25, 26, 28 and 29 over claims 18, 43 and 46 of Ishii '282.

Ishii '282 was filed on September 26, 2006, after the April 14, 2005 U.S. filing date of the present application. Thus, applicants may obtain a patent without filing a terminal disclaimer. See MPEP § 804(I)(B)(1) "If a provisional nonstatutory obviousness-type double patenting rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer." Thus no such rejection should have been made or communicated in this case.

Accordingly, all claims 1-17, 19-28 and 30-35 are now fully in condition for allowance and a notice to that effect is respectfully requested. The PTO is hereby authorized to charge/credit any fee deficiencies or overpayments to Deposit Account No. 19-4293. If further amendments would place this application in even better condition for issue, the Examiner is invited to call applicant's undersigned attorney at the number listed below.

Respectfully submitted,

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